REMARKS

Claims 8, 10-12, 14, and 123-128 of the subject application are currently pending, and have been rejected by the Examiner.

In particular, the Examiner has rejected claims 8, 10, 12, and 124-128 under 35 U.S.C. § 102(e) as being anticipated by Yu et al (U.S. 6,271,563).

With regard to claim 8, the Examiner has stated that:

> "A gate layer (21 or lower portion of 20) disposed above a substrate (12), the gate layer having a substantially level upper surface (see Figure 2);
> a conductive layer (upper portion of 20) disposed over the gate layer, the conductive layer extending beyond edges of the gate layer (see Figure 3);
> thin first spacers (19) disposed in contact with opposite sides of the gate layer and below the conductive layer;
> thick second spacers (22) disposed in contact with the thin first spacers, each thick second space having a width throughout its height which is constant in a direction parallel with the thin first spacers."
>
> (Page 2, Office Action mailed 4/22/2004)

Applicants, however, respectfully disagree with the Examiner in this regard, for the reasons set out below:

(1) The gate electrode disclosed in Yu does not include a conductive layer, as recited in claim 1:

Yu discloses a MOS transistor 10 which includes a gate structure 20. The gate structure 20 includes an oxide layer 18, an oxide spacer 19, a spacer layer 22, and a layer of polysilicon 21 (see Col. 2, lines 45-60). However, the gate structure 22 disclosed in Yu does not include a conductive layer disposed over a gate layer as recited in claim 8. As is known in the art, polysilicon is not regarded as a conductive layer eg. see US 5,726,479, Col 2-3.

(2) Yu fails to disclose the gate layer having a substantially level upper surface, as recited in claim 8;

Contrary to the Examiner's averment, reference numeral 22 does not refer to a gate layer, but instead refers to a high dielectric constant layer 22 which is deposited during an intermediate stage of manufacture, and subsequently worked to yield the spacers 22 shown in Figure 5 of the drawings. Thus, layer 22 shown in Figure 2 is not part of the ultimate gate structure 20 shown in Figure 5 of the drawings. Further, it will be seen that the gate structure 20 has a distinct curvature and is thus not "substantially parallel".

Accordingly, it is respectfully submitted that Yu does not teach or suggest all limitations of claim 8, and therefore cannot anticipate claim 8. Given that the remaining claims are dependent on claim 8, it is respectfully submitted that these claims are also not anticipated by Yu.

It is respectfully submitted that in view of the remarks set forth herein, all rejections have been overcome. All pending claims are now in condition for allowance, which is earnestly solicited.

If the Examiner determines that prompt allowance of these claims could be facilitated by telephone conference, the Examiner is invited to contact Vani Moodley at (408) 720-8300.

Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due. Furthermore, if an extension is required, then Applicants hereby request such an extension.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Dated: 7/20, 2004

Stephen M. DeKlerk
Reg. No. 46,503

Customer No. 008791
12400 Wilshire Bouldevard
Seventh Floor
Los Angeles, CA 90025-1030
(408) 720-8300